

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand sixteen.

PRESENT:

ROBERT A. KATZMANN,
Chief Judge,
DEBRA ANN LIVINGSTON,
DENNY CHIN,
Circuit Judges.

YAO JIANG,
Petitioner,

v.

LORETTA E. LYNCH, UNITED STATES
ATTORNEY GENERAL,
Respondent.

14-4695
NAC

FOR PETITIONER: Zhen Liang Li, Law Office of Zhen Liang Li, New York, New York.

FOR RESPONDENT: Benjamin C. Mizer, Principal Deputy Assistant Attorney General, Civil Division; John S. Hogan, Assistant Director, Office of Immigration Litigation; Samuel P. Go, Senior

1 Litigation Counsel, Office of
2 Immigration Litigation, United
3 States Department of Justice,
4 Washington, D.C.
5

6 UPON DUE CONSIDERATION of this petition for review of a
7 Board of Immigration Appeals ("BIA") decision, it is hereby
8 ORDERED, ADJUDGED, AND DECREED that the petition for review is
9 DENIED.

10 Petitioner Yao Jiang, a native and citizen of China, seeks
11 review of a November 24, 2014 decision of the BIA affirming an
12 October 10, 2012 decision of an Immigration Judge ("IJ") denying
13 Jiang's application for asylum, withholding of removal, and
14 relief under the Convention Against Torture ("CAT"). *In re Yao*
15 *Jiang*, No. A097 542 997 (B.I.A. Nov. 24, 2014), *aff'g* No. A097
16 542 997 (Immig. Ct. N.Y. City Oct. 12, 2012). We assume the
17 parties' familiarity with the underlying facts and procedural
18 history in this case.

19 Under the circumstances of this case, where the BIA has
20 adopted and supplemented the IJ's decision, we should review
21 the IJ's and BIA's decisions. *See Yan Chen v. Gonzales*, 417
22 F.3d 268, 271 (2d Cir. 2005). The applicable standards of
23 review are well established. *See* 8 U.S.C. § 1252(b)(4)(B);

1 see also *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 165-66 (2d Cir.
2 2008) (adverse credibility determination reviewed for
3 substantial evidence).

4 For asylum applications like Jiang's, governed by the REAL
5 ID Act, the agency may, "[c]onsidering the totality of the
6 circumstances," base a credibility finding on "demeanor,
7 candor, or responsiveness of the applicant or witness," and
8 inconsistencies and omissions in an asylum applicant's
9 statements and other record evidence "without regard to
10 whether" they go "to the heart of the applicant's claim."
11 8 U.S.C. § 1158(b)(1)(B)(iii); see *Xiu Xia Lin*, 534 F.3d at
12 163-64. In finding testimony implausible, if "the reasons for
13 [the IJ's] incredulity are evident," the implausibility finding
14 is supported by substantial evidence. See *Wensheng Yan v.*
15 *Mukasey*, 509 F.3d 63, 66-68 (2d Cir. 2007).

16 The agency reasonably determined that Jiang testified
17 inconsistently about the arrest of the two Falun Gong
18 practitioners who distributed flyers with her. Initially, she
19 testified that she did not know how long these practitioners
20 were detained; she later testified that they continued to be
21 detained more than three years after the incident. A

1 reasonable factfinder would not be compelled to credit Jiang's
2 explanation for this discrepancy—that she was unsure of the
3 length of their detention. *See Majidi v. Gonzales*, 430 F.3d
4 77, 80-81 (2d Cir. 2005).

5 The IJ was entitled to consider implausibilities in Jiang's
6 testimony. The IJ found incredible Jiang's testimony that she
7 knew to escape when the police arrived because Falun Gong
8 practitioners yelled her name from over 100 meters away. The
9 IJ questioned whether Jiang could hear over such a distance and
10 why the practitioners came up with a plan to warn one another
11 if the police arrived by calling out one another's names (rather
12 than yell "police" or some other non-identifying cue), since
13 doing so would alert the police to the names of those trying
14 to escape arrest. When confronted with these implausibilities,
15 Jiang insisted she was able to hear the practitioners yell and
16 stated that it did not occur to the Falun Gong practitioners
17 that the police would know Jiang's name if they called it out
18 because "[a]t that time [they] didn't think of so many things."
19 Cert. Admin. Record 137. As she did not actually explain the
20 implausibilities, the agency was not compelled to credit
21 Jiang's testimony. *See Majidi*, 430 F.3d at 80-81.

1 Jiang also challenges the IJ's demeanor finding. In
2 considering the considerable shift in Jiang's testimony about
3 the length of the detention of the two Falun Gong practitioners,
4 the IJ found that Jiang "may not be testifying from actual
5 experience, [and] that she has just simply memorized some
6 information that may have no connection to reality." Cert.
7 Admin. Record 66. This Court generally affords particular
8 deference to an IJ's assessment of an applicant's demeanor, *Jin*
9 *Chen v. U.S. Dep't of Justice*, 426 F.3d 104, 113 (2d Cir. 2005),
10 particularly when the IJ's demeanor finding is bolstered by
11 specific inconsistencies in the record, *Li Hua Lin v. U.S. Dep't*
12 *of Justice*, 453 F.3d 99, 109 (2d Cir. 2006).

13 Because the agency's adverse credibility determination is
14 supported by substantial evidence, and all of Jiang's claims
15 (asylum, withholding of removal, and CAT relief) rely on the
16 same factual predicate, the adverse credibility determination
17 is dispositive and it is unnecessary to consider the agency's
18 alternate determination that Jiang did not meet her burden for
19 relief. See *Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006);
20 see also *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam).

1 For the foregoing reasons, the petition for review is
2 DENIED. As we have completed our review, any stay of removal
3 that the Court previously granted in this petition is VACATED,
4 and any pending motion for a stay of removal in this petition
5 is DISMISSED as moot. Any pending request for oral argument
6 in this petition is DENIED in accordance with Federal Rule of
7 Appellate Procedure 34(a)(2), and Second Circuit Local Rule
8 34.1(b).

9 FOR THE COURT:
10 Catherine O'Hagan Wolfe, Clerk